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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION

Written statement submitted by the World Christian Life Community, a non-governmental organization on the Roster

The Secretary-General has received the following written statement, which is distributed in accordance with Economic and Social Council resolution 1296 (XLIV).

[15 March 1996]

The situation of Bhutanese refugees in Nepal

1. The World Christian Life Community, in consultation with the Jesuit Refugee Service, draws the attention of the Commission on Human Rights to the plight of some 90,000 Bhutanese refugees currently residing in camps in eastern Nepal and another 15,000 Bhutanese refugees living outside these camps in both Nepal and India. Half of the refugee population living in the camps in Nepal are women and about one third children. Most of the refugees wish to return to the place of their habitual residence while the Royal Government of Bhutan appears determined to deny them reentry. Six rounds of bilateral talks to resolve this situation between the Royal Governments of Bhutan and Nepal between 1994 and 1996, under the aegis of the Bhutan-Nepal Joint Ministerial Level Committee, have achieved little progress.

2. At their last meeting, held in April 1995, four categorizations of refugees were agreed upon. A number of organizations have expressed strong reservations with regard to the agreed categorizations as the refugees' eligibility for return would thereby be based on Bhutanese citizenship law.

If Bhutanese domestic law solely is applied to determine eligibility for return, a substantial number of the refugees will be denied the right to return and face the real danger of being rendered stateless. The Royal Government of Bhutan maintains that many of the persons registered in the camps as refugees have no claim to Bhutanese citizenship and may never have resided in Bhutan. The Office of the United Nations High Commissioner for Refugees (UNHCR), to the contrary, reports that the overwhelming majority of refugees who have entered the camps have been able to show documentary proof of Bhutanese nationality since screening began in June 1992, and a sample survey of camp residents conducted during the last quarter of 1995 by the Jesuit Refugee Service substantiates these findings.

Background

3. The three main ethnic groups of the Kingdom of Bhutan are the Ngalongs, the Sarchops and the ethnic Nepali population. The Ngalongs, forming the ruling minority, live mainly in the west of Bhutan, while the Sarchops are primarily located in the east. The ethnic Nepalis, also known as the Lhotshampas live primarily in southern districts. The Ngalongs are Lama Buddhists of Tibetan Mongoloid origin and speak Dzongkha while the Sarchops are of Indo-Burman origin and are also mainly Buddhists. The ethnic Nepali population speaks predominantly Nepali and a majority practises Hinduism. Population statistics for Bhutan and the ethnic breakdown of these figures are a source of considerable controversy and the accuracy of available population data is unclear. Also disputed is the date of the original arrival of the ethnic Nepalis in Bhutan.

4. In the report of the Working Group on Arbitrary Detention to the Commission on Human Rights at its fifty-first session on the visit of the Working Group to Bhutan (E/CN.4/1995/31/Add.3), the Royal Government of Bhutan was given considerable space to espouse its view that "prior to 1950 the Nepalese presence in Bhutan was confined to Samchi and the hills of Chirang. It was after that date that persons of Nepalese origin settled in areas in southern Bhutan". The first settlers, who were farmers, were given Bhutanese citizenship in 1958. Another influx of ethnic Nepalese who crossed illegally into Bhutan to work as contractual labourers allegedly took place in the 1960s. They were considered by the Bhutanese authorities to be economic migrants. The majority of the refugees, on the other hand, claim to trace their Bhutanese ancestry to the turn of this century and some even back to the seventeenth century.

5. While in the early 1950s the Royal Government of Bhutan appeared largely sympathetic towards the Nepali population, the mid-to-late 1950s saw a distinct change in the Government's attitude towards ethnic Nepalis living in the south of the country, culminating in rigorous policies to integrate ethnic Nepalis into northern Bhutanese culture by the late 1980s. A policy of "One Nation, One People" imposed the language, culture, traditions, customs and dress code (Driglam Namzha) of the ruling minority upon the rest of the population.

6. A new Citizenship Act, promulgated in 1985, provided the foundation for a progressive worsening of the situation of the ethnic Nepali population in southern Bhutan. A census carried out in 1988 applied standards of proof of

citizenship which were considered by many observers to have been unduly rigorous and arbitrary and seemingly targeted the southern districts of Bhutan. Many of the refugees in camps in Nepal complain that when they provided relevant documentation to the census officials at the time it was confiscated. There is no doubt that the census, in combination with the "Bhutanization" policy, caused considerable anxiety, resentment and apprehension among the ethnic Nepali population, culminating in unprecedented demonstrations in the south of the country in late 1990.

7. Following the demonstrations, there were widespread human rights violations, including intimidation, arbitrary arrests, rape, and torture, committed against ethnic Nepali southern Bhutanese. While in some cases the violations appear to have been in retaliation to the protests, in others, the violations, or threat of such, appear to have been deliberately aimed at forcing ethnic Nepalis to leave the country. Many in fact did so. From about mid-1992 onwards the methods of persecution appear to have changed, with refugees generally citing forcible evictions and the destruction of houses, as well as harassment and intimidation by local authorities, as being the commonly adopted strategy. Refugees also report having been coerced into signing so-called "voluntary" migration forms.

International and national legal context

8. The Kingdom of Bhutan is a signatory to the Convention on the Elimination of all Forms of Racial Discrimination since 1973, though, despite this declaration of intent, it has to date not yet ratified the Convention. The country is, moreover, a State party to the Convention on the Elimination of Discrimination against Women and to the Convention on the Rights of the Child since 1981 and 1990 respectively. As a State Member of the United Nations, Bhutan is, moreover, bound to uphold the principles of the Charter of the United Nations, as well as of the Universal Declaration of Human Rights.

9. According to the report of the Working Group on Arbitrary Detention referred to above, King Jigme Singye Wangchuck is vested with supreme power, including that of head of State and supreme judge. For most important decisions he is held to be, directly or indirectly, the ultimate authority. The country has no written constitution.

10. By virtue of the Nationality Law of Bhutan, enacted in 1958, the then King granted Bhutanese citizenship to Nepali settlers living in Bhutan. The granting of citizenship in 1958 was notified by royal proclamation, but was not accompanied by any special certification process. The Bhutan Citizenship Act (1977) amended the nationality law and made eligibility criteria more stringent. Under this amendment it was further specified that citizenship by birth was only available to persons whose parents were both Bhutanese citizens and that applicants for citizenship must demonstrate proficiency in speaking, writing and reading Dzongkha as well as having good knowledge of the culture, customs, traditions and history of Bhutan. The Bhutan Citizenship Act of 1985 was interpreted during the census of 1988 as further tightening the regulations for eligibility by restricting citizenship to ethnic Nepali adults who owned land and had lived in Bhutan since 1958.

Sample survey of the refugee camp population in Nepal conducted by the Jesuit Refugee Service

11. The Jesuit Refugee Service conducted a survey of the refugees during the last quarter of 1995 based on a sample of 29 interviews from among refugees from each of the 6 southern Bhutanese districts. The sample represented a total of 186 persons. Nineteen of those interviewed were men and 10 were women. All were Nepali speakers and had their language skills mostly acquired at home, with 21 of them never having attended school. The men in the sample had mainly been farmers, while the women were predominately housewives. Those interviewed represented a cross-section of the ethnic diversity among the Bhutanese of Nepalese or Indian origin, most of them being Hindus. The sample survey reveals that most of the refugees are of Nepalese as opposed to Nepali descent, and that they do not constitute one single Nepalese ethnic group but that there is a rather significant ethnic and religious diversity among the refugee population.

12. Twenty-seven out of the 29 refugees interviewed claimed that their fathers were born in Bhutan and 15 stated that their grandfathers were born in Bhutan. Two refugees claimed that their families had resided in Bhutan for four and five generations respectively. Only 4 out of the 29 refugees had not owned any land, primarily because they had previously been employed in the government service. The majority of those interviewed were able to produce land tax receipts, with four holding tax receipts dating back to 1935, 1948, 1955 and 1958 respectively.

13. Sixteen claimed that they had been classified as Bhutanese nationals during the 1988 census. Twenty-six claimed that they had been issued Bhutanese citizenship cards. The dates of issue of the citizenship cards ranged from 1981 to 1987. Eleven out of the 29 claimed confiscation of their cards. All but three of the refugees were able to produce at least one identity document and, more often than not, they produced several documents including citizenship cards, land tax receipts, land registration certificates or marriage certificates.

14. Reasons provided for leaving Bhutan varied and were often due to a combination of different factors. Three were accused of helping dissidents, five felt general insecurity in the village due to the presence of the army and harassment or fear of the same, ill-treatment, torture and rape. Five left mainly as a consequence of varying periods of imprisonment. Four expressed dissatisfaction with the Bhutanese dress code imposed in 1988, and five referred to participation in the demonstrations in 1990. One left because the citizenship card had been confiscated and another eight claimed they had been forced to sign so-called "voluntary migration forms". Specific gender related fears were expressed by a number of refugee women in the sample. While a reversal or even relaxation of the driglam namzha policy could encourage a large proportion of the refugees to return, personal security, freedom from harassment and intimidation would appear to be necessary preconditions for a return of the refugee population.

Recent demonstrations and detentions of refugees in India

15. Since January 1996, four separate groups of refugees from camps in eastern Nepal totalling some 950 persons, frustrated at the lack of progress in finding a solution to their situation, have taken the initiative and began walking towards Thimphu, the capital of Bhutan, via India in order to deliver a petition to the King of Bhutan. All were immediately detained under provisions of the Indian Penal Code upon entry into India. The first two groups of some 423 refugees were released after 10 to 14 days, while the majority of some 527 refugees, 344 of whom were arrested on 26 February and 183 on 12 March, remain in custody at the time of submitting this statement.

16. Some 150 refugees who had earlier been released from detention in Siliguri jail in India meanwhile resumed their march to the Bhutanese capital conscious of the fact that they might face renewed imprisonment by Indian security forces. While these refugees, as well as their compatriots in camps in Nepal and those living outside the camps in Nepal and India, faced an uncertain future, the Minister for Foreign Affairs of Nepal was quoted in the Kathmandu Post daily on 8 March 1996 as stating that "all the refugees living in the camps in Nepal must be allowed to return to Bhutan with dignity", while the Indian Express daily on 7 March 1996 is reported to have quoted King Jigme Singye Wangchuck of Bhutan, on an official visit to India between 4 to 7 March, as stating that "99 per cent of the refugees currently camped in eastern Nepal are not Bhutanese nationals". While the positions of the Governments of Bhutan and Nepal thus appear to be at loggerheads over the refugee issue, a seventh round of bilateral talks has been scheduled to take place from 4 to 8 April 1996.

Recommendations

17. In the light of the events described above, the World Christian Life Community urges the Commission on Human Rights to:

(i) Ask the Secretary-General to prepare a comprehensive report on the situation of the Bhutanese refugees in Nepal and India for the next session of the Commission on Human Rights;

(ii) Urge the High Commissioner for Human Rights, in close cooperation with the Office of the United Nations High Commissioner for Refugees, to examine the reasons for the exodus of the refugees and to mediate among concerned Governments with a view to arriving at an early resolution of the situation; and to develop a course of action to resolve the situation of the Bhutanese refugees and to take all necessary steps, in line with the Convention on the Reduction of Statelessness of 1961, to ensure these people do not become stateless;

(iii) Request the Working Group on Arbitrary Detention during its forthcoming visit to Bhutan to extend the visit and also investigate the situation of detained Bhutanese refugees in Nepal and India and report on its findings forthwith. The World Christian Life Community welcomes in this connection the invitation extended by the Royal Government of Bhutan to the Working Group for a return visit, now

planned for early 1996 (see E/CN.4/1996/40, paras. 36-37), and the initial positive response of the Government of Nepal to a visit of the Working Group (para. 39);

(iv) Call upon the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child to consider any violation of the Conventions with respect to refugee women and children prior to, during and after their flight from Bhutan;

(v) Encourage the Royal Government of Bhutan to repeal its 1985 Citizenship Act forthwith and to replace it with laws consistent with international human rights law and the letter and spirit of the Charter of the United Nations and the Universal Declaration of Human Rights and to ratify the Convention of the Elimination of all Forms of Racial Discrimination without further delay.

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